



Plaintiff alleges Chan is trying to represent the LLC, which is incorrect. Chan is trying to represent himself.

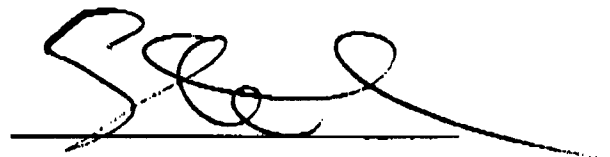
Plaintiff alleges that Chan is the alter-ego and individually liable for the alleged infringement. The LLC is now wound down. Chan is now the successor.

The LLC was in a position where it could not defend itself, Chan had no choice to achieve justice in the Court, except to wind the LLC down.

Please incorporate the Declaration and Exhibits WD-1 through WD-3, attached.

Our winding – down activities can be tracked in these Exhibits.

Respectfully Submitted this 31<sup>st</sup> Day of December, 2009



Steven A Chan

720 Center Street

Costa Mesa, CA 92627

949-650-6698

2viavr@gmail.com



2

6. I am privy to, and controlled the LLC activities, including accounting.

7. When Plaintiff's threatened suit, the LLC expended funds with Knobbe Martens Olsen and Bear. The initial replies were less than \$5000, but the quoted cost for retaining them in the matter was \$150,000 to \$500,000.

8. When suit was filed, The LLC expended funds with Glenn Lyon, to admit yet another attorney, Joseph Ribakoff.

9. That attorney was ordered inactive by the California Bar, on the first response due date.

10. The LLC did not have the \$15,000 and up retainer fee demanded by attorneys, with trademark expertise, to take on the defense.

11. Thus the LLC could not afford the defense required to respond to Plaintiff's claim.

12. As the managing parter, I met with the passive partner, my spouse Lanyi Chang. We concluded that the only way to access justice in the court was to admit the alter-ego liability allegation made by Plaintiff, wind the company down immediately, and represent pro se Chan in this Courthouse.

13. Other attorneys we spoke with that mentioned the ballpark fund requirements (\$15,000 and up) include Ash Patel, and David M. Lilenfeld, both IP attorneys in Atlanta, Georgia.

3

14. Chan proceeded winding down the company, with focus on the Secretary of State first, taxing authorities second.

15. On November 23, 2009, I filed form LLC4/7, with the Secretary of State, State of California, and placed it in the mailbox with a green signature return card. The card was returned the next week.

16. Subsequently, we received the FILESTAMPED COPY attached, with a datestamp November 30, 2009. See Exhibit labeled WD-1

17. We informed major vendors' Valley Forge Flag of Pennsylvania, and CF Flag of Alabama, of the change of our entity status within one week of the mailing of Form 4/7.

18. My company was dissolved because it could not afford access to the court. Any inference or claim to the contrary will not survive even a cursory inspection.

19. Winding down a company is not something done in a day, for all the steps that need to be taken, especially to convert to a sole proprietor.

20. The LLC is a US Government contractor, under CAGE Code 31DE3.

21. Until fully converted over, I have not had the ability to properly address this business.

22. On December 1, 2009, I contacted Dunn and Bradstreet, and initiated a new DUNS number, a pre-requisite for any government procurement.

4

23. On December 8, 2009, we received our applied for new EIN number 27-1442069

24. I am continuing the myriad steps required in winding down a business entity of 10 years age.

24.5. I closed the 'Seller's Permit' for the LLC by December 1, 2009. I opened a new account with the California State Board of Equalization, and they set the tax period start date for the new sole proprietor seller's permit to be the 1<sup>st</sup> day of the 4<sup>th</sup> quarter 2009, namely October 1, 2009. See Exhibit labeled WD-2.

25. For all taxation purposes, all state and federal government requirements have been achieved for a halt of tax reporting to the wound down entity, including income and sales taxes.

25.5 On December 9, 2009, we received our conformed copy of the fictitious business name statement, whereby those dba's were changed in the Official Records, Orange County, California, and file stamped as such. See Exhibit labeled WD-3.

26. Plaintiff's alleged alter-ego liability in their suit, and named both myself personally, and the company.

27. It is a notorious fact we are in the worst recession since the Great Depression.

5

28. Plaintiff and I both service a marketplace of realtors and agents, that are economically hard hit.

29. Business is down in all sectors of the LLC's line of business.

30. That a Defendant cannot afford an attorney should not come as a surprise to this court or any other in this land.

31. I deny any subterfuge inferred by Plaintiffs, or counsel, in the election to wind down the company.

I declare under penalty of perjury, that the forgoing is true and correct to the best of my personal knowledge and belief.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my personal knowledge and belief.

Executed this 30<sup>th</sup> of December 2009



Steven A Chan  
720 Center Street  
Costa Mesa, CA 92627  
949-650-6698  
2viavr@gmail.com



# State of California Secretary of State

LLC-4/7

EXHIBIT WD-1

FILED

In the office of the Secretary of State  
of the State of California

NOV 30 2009

## LIMITED LIABILITY COMPANY CERTIFICATE OF CANCELLATION

There is no fee for filing a Certificate of Cancellation.

IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

FILE NUMBER	ENTITY NAME (Enter the exact name of the limited liability company.)
1. Secretary of State File Number  199908410019	2. Name of Limited Liability Company  Steven A Chan LLC

### TAX LIABILITY (The following statement should not be altered.)

3. A final franchise tax return, as described by Section 23332 of the Revenue and Taxation Code, or a final annual tax return, as described by Section 17947 of the Revenue and Taxation Code, has been or will be filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

**DISSOLUTION** (Domestic limited liability companies ONLY: Check the "YES" or "NO" box, as applicable. Note: If the "NO" box is checked, a Certificate of Dissolution (Form LLC-3) pursuant to Corporations Code section 17356(a) must be filed prior to or together with this Certificate of Cancellation.)

4. The dissolution was made by a vote of all of the members. ☒ YES ☐ NO

**ADDITIONAL INFORMATION** (Enter any other information the managers or members filing the Certificate of Cancellation determine to include. Attach additional pages, if necessary. Additional information set forth on attached pages, if any, is incorporated herein by this reference and made part of this certificate. If no other information is to be included, leave Item 5 blank and proceed to Item 6.)

5.

### EXECUTION

6. I declare I am the person who executed this instrument, which execution is my act and deed.

Signature of Authorized Person

Date

Type or Print Name and Title of Authorized Person

Signature of Authorized Person

Date

Type or Print Name and Title of Authorized Person

**RETURN TO** (Enter the name and the address of the person or firm to whom a copy of the filed document should be returned.)

NAME

Steven A Chan

FIRM

ADDRESS

720 Center St., Building A

CITY/STATE/ZIP

Costa Mesa, Ca. 92627

LLC-4/7 (REV 08/2008)

APPROVED BY SECRETARY OF STATE





**TOM DALY**  
**CLERK-RECORDER**  
**12 CIVIC CENTER PLAZA, ROOM 106**  
**POST OFFICE BOX 238**

Recorded in Official Records, Orange County  
Tom Daly, Clerk-Recorder  
**20096214128 51.00**  
12/09/2009 10:04:00  
7 95 F01  
23.00 28.00 0.00 0.00 0.00 0.00 0.00 0.00

### FICTITIOUS BUSINESS NAME STATEMENT

**THE FOLLOWING PERSON(S) IS (ARE) DOING BUSINESS AS:**

Fictitious Business Name(s) VIA §		(Optional) Business Phone No.	
<input type="checkbox"/> New Statement	<input type="checkbox"/> Raffle - Not previous No.	<input checked="" type="checkbox"/> Change	
2. Street Address, City & State of Principal place of Business (Do not use P.O. box or P.M.B.) 720 CENTER ST. BUILDING B COSTA MESA, CA 92627 ORANGE		City	State Zip Code County
3. Full name of Registered Owner (If Corporation, enter corporation name) Steven A Chan		If Corporation / LLC State of Incorporation or organization	
Res. / Corp. Address (Do NOT use a P.O. Box or P.M.B.) 720 CENTER ST., BUILDING B		City COSTA MESA	State Zip Code CA 92627
4. (CHECK ONE ONLY) This business is conducted by: <input type="checkbox"/> a trust <input type="checkbox"/> a state or local registered domestic partnership			
<input checked="" type="checkbox"/> an individual <input type="checkbox"/> a general partnership <input type="checkbox"/> a limited partnership <input type="checkbox"/> an unincorporated association other than a partnership			
<input type="checkbox"/> a corporation <input type="checkbox"/> a Limited Liability Partnership <input type="checkbox"/> co-partners <input type="checkbox"/> a husband and wife <input type="checkbox"/> a joint venture <input type="checkbox"/> Limited Liability Co.			
5. Have you started doing business yet? <input checked="" type="checkbox"/> Yes Insert Date: 12/09/2009 <input type="checkbox"/> No		Notice: This Fictitious Business Name Statement expires five years from the date it was filed in the Office of the County Clerk-Recorder. The statement expires 60 days after any change in the facts is made other than a change in the residence address of the registered owner. A new Fictitious Business Name Statement must be filed before either expiration. When ceasing to transact business under an active Fictitious Business Name Statement, Abandonment shall be filed. The filing of this statement does not of itself authorize the use in this state of a Fictitious Business Name in violation of the rights of another under federal, state or common law (see section 14411 et seq., Business and Professions Code).	
6. If the registered owner is NOT a corporation, sign below: (See instructions on the reverse side of this form)  Signature: <u>Steve Chan</u> steve chan (Type or Print Name)  I declare that all information in this statement is true and correct. (A Registered owner who declares as true information which he or she knows to be false is guilty of a crime.)		If the registered owner is: a corporation, an officer of the corporation signs below. any type of partnership, the general partner signs below. a limited liability company, a manager or an officer signs below.  _____ Limited Liability Company/Corporation/Partnership Name  _____ Signature and Title of Officer/Manager or General Partner  I declare that all information in this statement is true and correct. (A Registered owner who declares as true information which he or she knows to be false is guilty of a crime.)  _____ Signature and Title of Officer/Manager or General Partner	

These fees apply at time of filing:  
Filing fee \$23.00 for one business name.  
\$7.00 for each additional business name  
\$7.00 for each additional partner after first two

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

THE FLAG COMPANY, INC. a	)	
Georgia Corporation,	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE NO.
vs.	)	
	)	1:09-CV-1880
STEVEN A CHAN, LLC (d/b/a FIVE	)	
STAR FLAGS and/or VIA5), a	)	
California Limited Liability Company,	)	
And STEVEN A. CHAN, a California	)	
resident	)	
Defendant	)	
	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have this day manually filed, by placing into a package, the foregoing **REPLY TO PLAINTIFF'S MOTION TO STRIKE AND ALTERNATIVE RESPONSE TO MOTION TO DISMISS DEFENDANT STEVEN A. CHAN, LLC.** with the Clerk of Court. The Clerk of Court will use the CM/ECF system to automatically send e-mail notification of such filing to the following attorneys of record:

J. Tucker Barr  
Arnold Golden Gregory LLP  
171 17<sup>th</sup> Street, N.W., Suite 2100  
Atlanta, GA 30363-1031  
Tel: (404) 873-8500  
Fax: (404) 873-8501  
Email: Tucker.barr@agg.com

Further, a copy has been placed in the US Mail, and sent to:

J. Tucker Barr  
Arnold Golden Gregory LLP  
171 17<sup>th</sup> Street, N.W., Suite 2100  
Atlanta, GA 30363-1031  
Tel: (404) 873-8500  
Fax: (404) 873-8501  
Email: Tucker.barr@agg.com

Dated, the 30<sup>th</sup> day of December, 2009



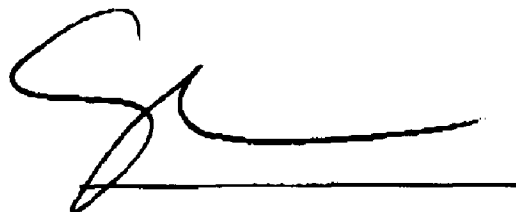
---

Steven A Chan  
720 Center Street  
Costa Mesa, CA 92627  
949-650-6698  
2viavr@gmail.com

**CERTIFICATE OF COMPLIANCE**

Pursuant to Civil Local Rule 7.1D, this is to certify that the Reply to Plaintiff's Motion to Strike and Alternative Response to Motion to Dismiss Defendant Steven A. Chan, LLC. complies with the font and point selections approved by the Court in Civil Local Rule 5.1C. The foregoing Reply was prepared on computer using New Times Roman font (14 point).

DATED this 30<sup>th</sup> day of December, 2009

A handwritten signature in black ink, appearing to be 'S. Chan', written over a horizontal line.

Steven A Chan

720 Center Street

Costa Mesa, CA 92627

949-650-6698

2viavr@gmail.com

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**THE FLAG COMPANY, INC., a  
Georgia Corporation**

**Plaintiff**

**v.**

**STEVEN A. CHAN, LLC (d/b/a FIVE  
STAR FLAGS and/or VIA5), a  
California Limited Liability Company,  
and STEVEN A. CHAN, a California  
resident,**

**Defendants.**

**CIVIL ACTION FILE NO.  
1:09-cv-01880-CAP**

**REQUEST FOR JUDICIAL NOTICE**

**TO THE HONORABLE UNITED STATES DISTRICT JUDGE:**

**COMES NOW Specially appearing Defendant STEVEN A. CHAN  
("Chan"), and submits this Request to the Honored Court to Take Judicial Notice  
of these items:**

- 1. Dictionary definition: "Farming- A real estate agency cultivating a particular  
residential area for possible representation of clients who wish to sell their  
property." Allen, Robert D., and Thomas E. Wolfe. 1993. *The Allen and  
Wolfe Illustrated Dictionary of Real Estate*. (Exhibit JD-1)**
- 2. "Invoice" for Mr. Duane Miller, bill of sale for 1500 'farming flags'. From  
the publically available US Public Trademark Office Server, Plaintiff's  
trademark application and action jacket. (Exhibit JD-2)**

3. "Invoice" for Ms. Robin Muzeka, bill of sale for 2000 'farming flags'. From the publically available US Public Trademark Office Server, Plaintiff's trademark application and action jacket. (Exhibit JD-3)
4. "US Farming Flags" advertisement. The Flag Company. March 1993. From the publically available US Public Trademark Office Server, Plaintiff's trademark application and action jacket. (Exhibit JD-4)
5. "Farming Flags" advertisement. The Flag Company. May 2000. From the publically available US Public Trademark Office Server, Plaintiff's trademark application and action jacket (Exhibit JD-5)
6. "Realtor News—Classified, Invoice No. 362958". The Flag Company. May 12, 1992. From the publically available US Public Trademark Office Server. Plaintiff's trademark application and action jacket (Exhibit JD-6)
7. "US Farming Flags" advertisement. The Flag Company. June 2007. California Real Estate Trade Journal, Classifieds Section, showing typical Plaintiff advertising using mark at issue as generic name. (Exhibit JD-7)

Respectfully submitted for consideration this 31<sup>st</sup> day of December, 2009.

Steven A Chan

720 Center Street

Costa Mesa, CA 92627

949-650-6698; 2viavr@gmail.com

SD-1  
Exhibit

family. It is derived by deducting an interest charge for the use of farm capital from net family farm income.

**farm family net income.** The compensation, including the value of family living from the farm, for farm capital, labor, the operator's management, and the land labor of unpaid members of the operator's family. It is derived by deducting farm expenses, exclusive of the value of unpaid family labor, from gross farm income.

**farm income.** The sum of the annual receipts from sales, miscellaneous farm receipts, increase in farm inventory, and the value of living from the farm furnished to the operator, his family, and hired laborers.

**farm land.** Land devoted to agricultural production; usually used to refer to the land comprising a farm. Such land includes both tillable and untillable areas as well as any woodlots.

**farm net income.** The compensation, including the value of family living from the farm, for farm capital and for the operator's labor and management. It is derived by deducting farm expenses from gross farm income.

**farm pond.** A man-made earthen storage reservoir for a farm's water supply. Usually used for watering livestock, but may be used for household plumbing if the pond is in a suitable location. The pond is made by constructing a small dam across a natural drainage way.

**farm-to-market-road.** A road outside the primary state highway system which connects with towns or primary highways.

**Farmers Home Administration (FmHA).** A government agency within the U.S. Department of Agriculture that operates under the Consolidated Farm and Rural Development Act of 1921 and Title V of the Housing Act of 1949. This agency provides financing to farmers and other qualified borrowers who are unable to obtain loans elsewhere. The agency makes loans with funds borrowed from the U.S. Treasury.

**farming.** A real estate agency cultivates a particular residential area for possible representation of clients who wish to sell their property.

**farmstead.** The site and location of the farm buildings; the focal point of the farm operations.

**fascia.** A flat, horizontal member of a cornice placed in a vertical position.

**feasibility study.** A study or analysis that determines whether a proposed or existing real estate project successfully meets desired objectives.

## REAL ESTATE AND ALLIED TERMS 1-41

**featherbedding rules.** Those rules preserving outmoded and inefficient work methods.

**Federal Civil Rights Act of 1968 (Public Law 90-284).** Title VIII of this act provides for "Fair Housing" . . . April 11, 1968.

**Federal Consumer Credit Protection Act (Truth-in-Lending).** The Truth-in-Lending Act (Regulation Z) is a key portion of the Federal Consumer Credit Protection Act, which became effective July 1, 1969. Its principal purpose is to tell the customer how much is being charged for credit and to show the relative cost of credit expressed in terms of the annual percentage rate (APR) and, in most cases, the total dollar amount of the finance charge. With this information, consumers can make credit cost comparisons among various credit sources, so as to avoid uniformed use of credit. Both creditors and, in certain situations, those who merely arrange the extension of credit have a legal duty to make the disclosure required by the act.

**Federal Department of Housing and Urban Development Act of 1965 (Public Law 89-174).** Established a Department of Housing and Urban Development . . . Sept. 9, 1965.

**Federal Deposit Insurance Corporation (FDIC).** Agency of the federal government which insures deposits of commercial banks and savings banks.

**Federal Emergency Home Purchase Assistance Act of 1974 (Public Law 93-449).** Legislated the Government National Mortgage Association conventional Tandem authority to increase on an emergency basis the availability of reasonably priced mortgage credit . . . Oct. 13, 1974.

**Federal Emergency Housing Act of 1975 (Public Law 94-50).** Includes the Emergency Homeowners' Relief Act; authorizes temporary assistance to the unemployed or underemployed for the purpose of defraying mortgage payments . . . July 2, 1975.

**federal land banks.** Strictly speaking, the land banks are a competitor to thrifts. However, despite their vast network of offices and financial resources, the land banks' regulations limit their participation in housing loans to 15 percent of their total investments. Also, their money is limited to farmers and ranchers.

**Federal Home Loan Bank Board (FHLBB).** A regulatory and supervisory agency for federally chartered savings institutions. It oversees the operations of the Federal Savings and Loan Insurance Corporation and the Federal Home Loan Mortgage Corporation.



(404) 428-7180

800 762-0956

FAX (404) 428-6975

## Invoice

=====

The Flag Company, Inc.  
4290 Bells Ferry Road  
Suite 106643  
Kennesaw, Georgia 30144

Mr. Duane Miller  
Coldwell Banker Good Neighbor Realty  
13 West Main Street  
Cobleskill, New York 12043

Inv. # 0906224

SHIPPED TO: same

*Mary Miller / Teresa Shaw*

CUSTOMER ORDER

SALESMAN

TERMS

DATE

415-234-4343

Teresa

MC

5/24/91

MC 115215-3128-1425-5849 exp. 2/93

(1500) farming flags

\$ 405.00

FOURTH OF JULY

SUB-TOTAL

\$ 405.00

TAX

\$ N/A

S &amp; H

\$ 37.50

TOTAL

\$ 442.50

PLEASE CALL WHEN I CAN BE OF ASSISTANCE.  
PLEASE USE INVOICE NUMBER WITH PAYMENT.

THANK YOU

Teresa Headrick

PAID  
JUN 14 1991

SHIPPED JUN 14 1991  
415-234-4343-2

70

Exhibit  
JD-2

(404) 428-7100

800 962-0956

FAX (404) 428-6975

## Invoice

-----  
The Flag Company, Inc.  
4290 Bell's Ferry Road  
Suite 106643  
Kennesaw, Georgia 30144

Ms. Robin Muzeka  
ERA Daniel & Wohlwender Realty, Inc.  
549 Lake Mary Boulevard  
Lake Mary, Florida 32746

Inv. # 0906180

SHIPPED TO: same

CUSTOMER ORDER	SALESMAN	TERMS	DATE
407-321-9444	Mike	prepay	5/17/91

(2000) farming flags

\$ 540.00

FOURTH OF JULY

SUB-TOTAL	\$ 540.00
TAX	\$ N/A
S & H	\$ 50.00
TOTAL	\$ 590.00

PLEASE CALL WHEN I CAN BE OF ASSISTANCE.  
PLEASE USE INVOICE NUMBER WITH PAYMENT.

THANK YOU

Mike Lawrence

SHIPPED JUN 14 1991

4723674 21-1

Exhibit

JD-3

THE FLAG COMPANY, INC.  
3094 LORING ROAD KENNESAW, GEORGIA 30144  
(404) 974-0507 (800) 962-0956 FAX (404) 974-0793

Exhibit.

JD-4

# US FARMING FLAGS



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RE/MAX FIELD FLAGS	ONE OR TWO PIECE	\$ 8.00
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RE/MAX CARAVAN FLAGS		\$ 9.00

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• Instant credit (600) search  
• 48 hour optional checks  
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www.rickseiler.com

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MILITARY PROPERTY MANUAL  
1-800-870-1881

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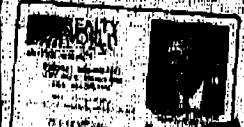
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Exhibit JD-5

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Michael Muller - President

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**LOAN REFERRALS**

Exhibit.  
JD-7

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Luxury Real Estate Web Television Design Special  
Contact: **Realty Impact Marketing**  
Northern California: **408-509-2301**  
Southern California: **760-271-926**



J. Tucker Barr  
Arnold Golden Gregory LLP  
171 17<sup>th</sup> Street, N.W., Suite 2100  
Atlanta, GA 30363-1031  
Tel: (404) 873-8500  
Fax: (404) 873-8501  
Email: Tucker.barr@agg.com

Dated, the 25<sup>th</sup> day of November, 2009



Steven A Chan  
720 Center Street  
Costa Mesa, CA 92627  
949-650-6698  
2viavr@gmail.com



**CERTIFICATE OF COMPLIANCE**

Pursuant to Civil Local Rule 7.1D, this is to certify that the foregoing Request for Judicial Notice complies with the font and point selections approved by the Court in Civil Local Rule 5.1C. The foregoing Notice was prepared on computer using New Times Roman font (14 point).

DATED this 25th day of November, 2009

A handwritten signature in black ink, appearing to read 'Steven A Chan', is written over a horizontal line.

Steven A Chan

720 Center Street

Costa Mesa, CA 92627

949-650-6698

2viavr@gmail.com

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

THE FLAG COMPANY, INC. a

Georgia Corporation,

Plaintiff,

v.

STEVEN A CHAN, LLC (d/b/a FIVE

STAR FLAGS and/or VIA5), a

California Limited Liability Company,

and STEVEN A. CHAN, a California

resident,

Defendant

CIVIL ACTION NO:  
1:09-CV-1880

Chan's Reply to Docket 27 [Response in Opposition to Motion for Protective Injunction]

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Specially appearing Defendant STEVEN A. CHAN ("Chan"), and  
files with the Court this "Reply to Plaintiff's Response to Defendant's Motion for  
Protective Injunction

Page 1 of 12

Defendant's Reply to Plaintiff's  
Response to Defendant's  
Motion for Protective Injunction

To the Honorable Judge Pannell:

Defendant Chan seeks a protective injunction reversing Plaintiff's misappropriation of Chan's customer list. The face of the pleadings within this suit as prima facie evidence of Plaintiff's unclean hands and theft of the List.<sup>1</sup>

Your Honor, Mr. Chan's request to protect the customer list is merits based. We ask you to judge *the merits of the face of the pleadings* in their aggregate<sup>2</sup>. We pray this leads to your conclusion that Plaintiff's pleadings do not pass a 'smell test.' Further, the seriousness of the charges is matched by the serious flaws in the pleadings that indicate the Plaintiff's unclean hands. The Court is justified to Grant our Motion to protect our customer list, under this Court's inherent power, to act, under the All Writs Act.

### The Contradictory Pleadings

a) on the one hand, we have the Opposition<sup>3</sup> of many pages, including a sworn statement.<sup>4</sup> At their end, it is over 8 transactions. Why bother opposing if the list doesn't exist? (but for those 8)<sup>5</sup>. Doesn't quite seem to be worth lawyering over.

<sup>1</sup> FED. R. CIV. P. 9(b) ("Malice, intent, knowledge, and other condition of mind of a person may be averred generally.")

<sup>2</sup> Notably, this Motion to Protect the Customer List springs from a plain reading of the Complaint's paragraph 16; Plaintiff's response to this motion is surprising to say the least, over these 8 transactions. Chan concedes if there was but one customer responsible for the quantity of plastic flags claimed, that would be a big customer. Even 8 customers, each purchasing thirty thousand flags, are big customers, likewise anything between the two spectrums. In support of this reply, Chan includes a example invoice in accounting systems for the year 2007, and it further those 8 invoices amount to less than 1% of Plaintiff's allegations (see Complaint paragraph 16)

<sup>3</sup> See Docket 27, Response in Opposition

<sup>4</sup> *Id.* see Attachment

<sup>5</sup> *Id.* Paragraph 8

b) and on the other hand – we have a repetitive<sup>6</sup> allegation –*starting in their Complaint*<sup>7</sup> – that from 2002-2007, Chan ordered a large amount of these plastic American flags from Plaintiff; yet Plaintiff's response to this Motion attaches a declaration<sup>8</sup> stating 'there are no records in {Plaintiff's} accounting system relating to orders placed by Defendants,' (but for those 8 orders on the other hand.)

### Counter Argument Summary

a) Plaintiff contends we have no underlying claim.<sup>9</sup> But there is a claim inherent in our defense, plainly stating the mark at issue "farming flags" is a generic term,<sup>10</sup> Though not pled in a [counter]'claim' format, it is averred. Further, our "complaint need not plead law ... or theory..."<sup>11</sup> and "all pleadings shall be so construed as to do substantial justice."<sup>12</sup>

b) There is no harm to protect the status quo during the pendency of these proceedings. In Plaintiff's view, this list doesn't (hardly) exist;

c) Plaintiff contends Chan's customer list isn't "legally protectable,"<sup>13</sup> and Chan's fears are 'irrational'<sup>14</sup>. Both these assertions are above the law.

<sup>6</sup> See Opposition to Motion to Quash - Docket 29 Page 3 first sentence, and the following footnote.

<sup>7</sup> Paragraph 16 of the complaint states "defendants purchased more than 230,000 flags from plaintiff

<sup>8</sup> Docket 27, Attachment: Affidavit / Declaration of Vicki Lawrence paragraph 9

<sup>9</sup> See Docket 27, Response in Opposition page 5 at II(A)

<sup>10</sup> See Docket 24, Corrected Answer to Complaint and Affirmative Defenses paragraph 53.

<sup>11</sup> See *Bennett v. Schmidt*, 153 F.3d at 518 ("Complaints need not plead law or match facts to every element of a legal theory...");

<sup>12</sup> Fed. R. Civ. P. 8(f)

<sup>13</sup> See docket 27 Response in Opposition Section B, pg 7

<sup>14</sup> Id. See Section C, pg 7

d) the sum of Plaintiff's face of their pleadings do not pass the smell test, and run counter to the Federal Rules.<sup>15</sup>

**A. Plaintiff contends Chan has not made a Claim**

*Chan contends his affirmative defense contains a claim as a matter of logic, and under the force of the Plaintiff's charges.*

Chan's admits his November 22, 2009 filings in response to this suit could be dog-legged with your Honor's requirements, and begs a liberal view of the documents that construct his initial responses to this Federal suit. Chan's intentions with the 4 motions and the answer of that date, were to deliver responsive pleadings. The entirety of the pleading can only be gotten from the entirety of the filings. The Motion to Protect Customer List is one of those filings.<sup>16</sup>

The underlying counterclaim, from a narrowed field of defenses available to Plaintiff's "Incontestability" assertion, is the counter-assertion that farming flags is a generic term<sup>17</sup>, and will not survive historic, industry, linguistic, or legal scrutiny.

---

<sup>15</sup> See *McHenry v. Renne*, 84 F.3d 1172 (9th Cir.1996) at 1179 ("[P]rolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges."); *Foster v. Pfizer*, No. 00-1287-JTM, 2000 WL 33170897, at \*1 (D. Kan. Dec. 12, 2000) (stating prolixity places an undue burden on the court and defendant). //HOWEVER IF "[U]pon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." FED. R. CIV. P. 12(f) Chan requests to leave open these pleading contradictions for use in his defenses.

<sup>16</sup> Please see docket 21

<sup>17</sup> 15 U. S. C. § 1064(c), ALSO § 1065(4) "'no incontestable right shall be acquired in a mark which is the generic name for the goods

Both words are generic on their own, and 'farming has a dictionary definition'<sup>18</sup> specific to the real estate industry.

This affirmative defense contains a claim. Should the term be deemed generic, the law requires you to order Registration 1858628<sup>19</sup> stricken from the Trademark Registry. Hence the underlying claim putting the issue before you, exists.

#### B. Maintaining the Status Quo is Appropriate

According to Plaintiff, she knows of only 8 transactions related to Chan, that can produce data from their 'accounting system. She has conducted "a diligent search" to no further avail.<sup>20</sup> There are 'no...other records in [their] possession containing names and addresses of Defendant's customers, and [she] does not believe any such documents exist."<sup>21</sup> These *sworn* statements by Plaintiff should 'backed up' the Complaint's allegations, not contradict them. Contradiction is a red flag, and it would not be unreasonable to infer other contradictions or out-right misrepresentations to this Court are occurring. Maintaining the status quo in this light is appropriate.

Plaintiff seeks damages; actual and exemplary<sup>22</sup>, and lost profits,<sup>23</sup> In the absence of an accounting system where customer records are kept, these cannot be computed. Plaintiff swears financial data only exists for the period that some high

<sup>18</sup> See Request for Judicial Notice labeled JD-1: The phrase is constructed from trade jargon 'farm' and 'farming' and a common word 'flag' (for the USA flag) dictionary

<sup>19</sup> Complaint, Exhibit A

<sup>20</sup> See Docket 27, Exhibit Declaration par. 8

<sup>21</sup> Id. Par. 10

<sup>22</sup> Docket 1, Complaint Par 34

<sup>23</sup> Id. Prayer section paragraph 4

1 government officials term the worst economic downturn since the Great  
 2 Depression. The relevant consuming public is realtors, and real estate agents,  
 3 who's profession suffers at the housing market's cratering.<sup>24</sup> Thus, Plaintiff's  
 4 accounting records cover only 'bad' years; the lack of accounting system records  
 5 prejudice findings for whomever wins or loses. (The protective order should be  
 6 expanded<sup>25</sup> to cover the Plaintiff's accounting system; it's in the best interest of  
 7 Plaintiff should they prevail.)

8 Plaintiff claims she has 8 customer's that can be attributed to Chan. We contend an  
 9 injunction protecting this minute portion of the consuming public is not a 'real' or  
 10 significant adverse impact on the public interest, nor Plaintiff. (After all, Plaintiff's  
 11 sworn statement concedes these are "Defendant's customers,"<sup>26</sup> and there is no  
 12 "inten[tion] to solicit business from Defendant's customers."<sup>27</sup>) With no harm to  
 13 herself, opposition to this Motion is [near] moot, thus there is no harm in  
 14 maintaining the status quo.  
 15  
 16  
 17  
 18  
 19  
 20

21  
 22 <sup>24</sup> Chan begs the Court leave for these two sentences; if requested, Chan will furnish Judicially Noticeable material  
 to back up these notorious notions.

23 <sup>25</sup> Chan motions the Court to expand the order to instruct the Plaintiff's to protect the business data ongoing, and  
 thus, outside their standard procedures, of such a short accounting record window, until the conclusion of these  
 proceedings.

24 <sup>26</sup> See Docket 27 Attachment Declaration of Vicki Lawrence par. 8

25 <sup>27</sup> *Id.* At par 13.

**B. The pleadings are inappropriate.**

Pleading under the Federal rules provide notice alone.<sup>28</sup> Rule 8 requires only a "short and plain statement of the claim showing that the pleader is entitled to relief."<sup>29</sup> However, Plaintiff's Complaint, Opposition to Quash, and Opposition to this Motion contain contradictions within themselves.

These documents allege Chan purchased nearly a quarter million plastic American Flags from 2002-2007. Alarmed at the plain reading of the Complaint at paragraph 16, Chan filed this Motion to protect his customer data supplied to Plaintiff in trust. Their response is to state "there are no records in the Flag Company's accounting system relating to orders placed by Defendants."<sup>30</sup> Where does the basis for the quarter million plastic American flags that Plaintiff alleges was purchased by Chan, come from?

This specificity of pleading isn't necessary to allege Lanham infringement. Is Plaintiff alleging something else, unwritten as of yet?<sup>31</sup> Plaintiff does not deny the underlying product is the American flag, and does not speak to the underlying product except in circumspect, and mentions the relevant consuming public only

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<sup>28</sup> See 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1202, at 68 (2d ed. 1990)

<sup>29</sup> FED. R. CIV. P. 8(a)(2).

<sup>30</sup> The drumbeat of Plaintiff's allegations are contradicted by the Declaration and Opposition to this motion, see Opposition to Motion docket 27, page 4 footnote 3.

<sup>31</sup> Other matters are pled in ways to suggest certain relationships and event sequences that are equally puzzling; see footnote 2 in Plaintiff's response to this motion. How does Plaintiff 'know' when Chan collected money from customers? See also Declaration of Vicki Lawrence paragraph 6. If Plaintiff alleges some kind of 'agreement' in place between them and us, beyond commercial documents such as purchase orders, payment histories, invoices and commercial statements, we request the Court compel them to allege it clearly.



once in all their pleadings. But, the pleadings go to great 'hyper-detail' on things such as when Chan collected money<sup>32</sup>. This heightened pleading of 'fact' is suspect, along with Plaintiff's condition of mind. After all, they have professional counsel, which under Rule 11 implies some level of 'scrubbing' by the officer executing the pleadings.

Simply, there is much subterfuge in Plaintiff's pleadings on their face. (*Alleging a business transaction fact (customer purchased x product) and then stating 'no accounting records exist to support such facts'.*) The matter before you warrants close scrutiny; the hint of Plaintiff's unclean hands in this Courtroom should warrant Your Honor's discretion in granting this Motion, at least, under the judicial estoppel doctrine.<sup>33</sup> At least, we pray to protect the "integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment."<sup>34</sup>

**C. By denying it's existence, Plaintiff has misappropriated the List**

a) Each of the hundreds of Purchase orders issued by Chan to Plaintiff contained a term – "This is a Blind Drop", an each of Plaintiff's invoices acknowledged in writing their acceptance of the term, and commercial paper.

<sup>32</sup> Id. Page 3, footnote 2 curiously defines a sequence of payments. It further purports a course of conduct in direct contravention to Plaintiff's invoices to Chan, which repeat Chan's purchase order terms 'no manufacturers mark'.

<sup>33</sup> Judicial estoppel is an equitable doctrine invoked at a court's discretion. *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S.Ct. 1808, 1815, 149 L.Ed.2d 968 (2001).

<sup>34</sup> Id.

b) Plaintiff's denies acceptance of "blind drop" implies any confidentiality implication,<sup>35</sup> "at least with respect to Plaintiff." This flies in the face of any google-able description of 'blind drop.'

c) Plaintiff's denial that the list exists, is prima facie evidence, that they have appropriated the list, wrongly. It reasonable for this Honorable Court to infer that accounting systems exist to make lists of customers, for marketing purposes, or business analysis purposes. It is reasonable for the Court to expect pled facts to have a basis.

The mis-appropriation of the list has occurred, it was threatened in the Complaint thus leading to this motion, and in their tortured response and sworn Declaration in opposition, the deed was done. It is appropriate the Motion be granted.

#### D. The Strike Suits Stink

What has occurred on the face of the pleadings? Plaintiff makes allegations, but has no evidence to back up basic statements of the commercial relationship between Her and Chan. Meanwhile, Chan has a stack of invoices stamped 'paid' from Plaintiff; on these invoices' face, they repeat a 'no mfg marks' term.<sup>36</sup> Any agreements beyond the face of the commercial chain of documents is a 'he said she said.' None of Chan's Purchase orders to Plaintiff, nor did any of Plaintiff's

<sup>35</sup> See Docket 27, Resp. at page 6 bottom paragraph "Defendant made no effort...to keep information a secret..."

<sup>36</sup> Chan states 'We have formal paperwork documentation of just about every transaction with Plaintiff; if any are missing, that would be quite the exception. See Exhibit MA-2 for an example PO we issued Plaintiff; all PO's issued are substantively similar.

1 invoices or statements to Chan, contain a trademark symbol (the 'TM'), or the  
2 mark at issue.

3  
4 To the contrary, each and every one of Plaintiff's invoices and statements  
5 contained only the root word 'farm,' used generically, without the word flag<sup>37</sup>.  
6 This correlates directly with Chan's e-commerce sites www.farmflags.com and  
7 www.farmflag.com. In contrast, plaintiff's publicly available invoices clearly use  
8 the phrase 'farming flags' in invoices to their retail customers. See Exhibit marked  
9 'Exhibit JD-2' and 'Exhibit JD-3.'<sup>38</sup>

10 Plaintiff's pre-trademark registration and post-registration marketing materials  
11 need no explanation as to what farming flags are. All the advertisements from  
12 1991<sup>39</sup>, and 2007<sup>40</sup> show the term being used generically; with no explanation of  
13 what a farming flag is other than it's use in the consuming public's domain<sup>41</sup>. No  
14 explanation to the relevant public of just what a farming flag is, is necessary, (it  
15 was already known, so there is no need to.) Note Exhibit JD-6<sup>42</sup> shows the ad in a  
16 category called 'farming tools.'

17  
18 The mark at issue consist of two words, 'farming' and 'flag'. Individually, both are  
19 generic dictionary terms. Particularly, the term farming is a term of art in the real

20 <sup>37</sup> See Judicial Notice Exhibit JD-2p1 and JD-2p2, for the front and back of Plaintiff's invoice; all those made to  
21 Chan are substantively of identical format.

22 <sup>38</sup> The publicly available United States Patent and Trademark website allows the trademark 'folder' to be  
downloaded for viewing. These exhibits are from that folder.

23 <sup>39</sup> See Judicial Notice Exhibit JD-4 and JD-5, from the USPTO public web server;

24 <sup>40</sup> See Judicial Notice Exhibit JD-7

25 <sup>41</sup> Generic use by the party seeking trademark protection is relevant because "[a] kind of estoppel arises when the  
proponent of [a] trademark use is proven to have itself used the term before the public as a generic name. . .

26 <sup>42</sup> "McCarthy § 12:13.

<sup>42</sup> This Exhibit is available on the USPTO public trademark query

1 estate industry, and exists in industry-specific dictionaries. See Exhibit JD-1,  
 2 copied from a 1983 real estate industry-specific dictionary.

3  
 4 The All Writs Act

5 Plaintiff's call upon *Klay v United Healthgroup*.<sup>43</sup>

6  
 7 A preliminary injunction is justified; the motion should be granted. We urge this  
 8 Honorable Court to find in Chan's favor, and look to "an injunction under 28  
 9 U.S.C. § 1651(a), the All Writs Act, which states, "The Supreme Court and all  
 10 courts established by Act of Congress may issue all writs necessary or appropriate  
 11 in aid of their respective jurisdictions and agreeable to the usages and principles of  
 12 law." The Act does not create any substantive federal jurisdiction." *Id.* And further  
 13 see also *Clinton v. Goldsmith*, 526 U.S. 529, 537, 119 S.Ct. 1538, 1543, 143  
 14 *L.Ed.2d 720 (1999)* (holding that an injunction under the All Writs Act is an  
 15 extraordinary remedy that "invests a court with a power that is essentially equitable  
 16 and, as such, not generally available to provide alternatives to other, adequate  
 17 remedies at law").

18 Your Honor, the gravaman of the matter is very clear in this case: is the term  
 19 'farming flags' generic or not? The Court can determine that Chan might be likely  
 20 to prevail, or some accrual either way of 50/50. We urge the Court to review the  
 21 face of these pleadings. The combination of the accrual and an appraisal of the face  
 22

---

23  
 24  
 25 <sup>43</sup> See Plt. Resp. [docket 27] pg 5, bottom line

1 of the Plaintiff's pleadings tip the scale in favor of granting this Motion to Protect  
2 Chan's Customer List.

3  
4  
5 Respectfully Submitted this 31<sup>st</sup> Day of December, 2009  
6

7   
8  
9

10 Steven A Chan  
11

12 720 Center Street

13 Costa Mesa, CA 92627

14 949-650-6698

15 2viavr@gmail.com  
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The Flag Company, Inc.  
3600 Cantrell Industrial Court  
Acworth, Georgia 30101  
770-974-0507 / www.flagco.com

0971467

1200 ViaFive  
Steve Chan  
220 Center Street - Unit B  
Costa Mesa CA 92627

SALESPERSON VICKI	DATE OF INVOICE 05/09/07
SHIP TO 949.650.6698 / fx 949-631-3080 SEE VICKI FOR PAYMENT SHIP TO ADDRESS BELOW PLAIN BOX / VIA FIVE SHIPPER	

TERMS &amp; CONDITIONS - SEE REVERSE

	05/09/07	UPS Ground			Net 10	SAC0508071050	
100	FARM 12x18x30 USA					0.22	22.00
100	COMPLIMENTS CARDS white					0.05	5.00
	PLAIN BOX / NO INFO / SHIPPER IS VIA FIVE						
	SHIP FREIGHT COLLECT ON UPS#443Y4Y						
	E-MAIL TRACKING TO LANYI@FIVESTARFLAGS.COM						
	SHIP TO: COLDWELL BANKER RESIDENTIAL REALTY						
	8 WATERS AVENUE						
	ROCKY HILL, CT 06067						
	ATTN: RENEE OKO						
	USE SAC05080710 AS UPS REF#						
						Subtotal	27.00
						TOTAL	27.00

*Thank You*

Exhibit  
11A-1-1

### Terms & Conditions

- (1) **Warranty Disclaimer**— Some color fading due to exposure to the sun is natural and does not affect the usability of the flag and is not a warranty issue. Tears and fraying resulting from high winds and other weather conditions, as well as torn flags and normal wear, are not covered under this warranty. All products are inspected before shipment. Seller makes no warranties, expressed or implied, including but not limited to warranties of merchantability or fitness for a particular purpose. In no event shall Seller be liable to Buyer for incidental, consequential, special or extraordinary damages whatsoever.
- (2) **Shortages & Damages**— Claims for shortages and/or damages must be made by Buyer within 48 hours of receipt of the goods, and no claim made after the expiration of such period will be entertained or allowed.
- (3) **Returns**— All returns must be authorized in advance by Seller within 10 days of receipt of goods by Buyer. Buyer must pre-pay all freight on authorized returned goods. Freight claims resulting from return shipment are the responsibility of Buyer. Custom, non-stock and special order items are not returnable. Returns will not be accepted after 30 days from date of invoice and no adjustments of any kind will be made after 30 days from date of invoice. A 20% restocking fee will be charged against any refund due.
- (4) **Delays**— All orders are accepted by Seller upon the express understanding by the Buyer that Seller shall not be liable for delays in delivery of the goods or inability to deliver the goods caused by or due to such things as strikes, transportation, equipment or material, or by reason of fires, floods, strikes, embargoes, actions of any military or civil authorities, whether legal or de facto, labor difficulties, riots, lock outs, acts of God, or similar or different circumstances beyond the control of Seller.
- (5) **Cancellations**— Orders for custom, non-stock and special order items cannot be cancelled except upon terms that will compensate Seller for costs incurred.
- (6) **Back Order**— Seller ships full orders only - No partial shipments.
- (7) **Freight**— All costs of freight, transportation or mailing, and all demurrage charges shall be paid by Buyer.
- (8) **Delivery**— Delivery of the goods by Seller to the carrier at the point of origin shall constitute delivery of the goods to Buyer and thereafter shipment of the goods shall be at Buyer's risk. All claims and allowances for damage to the merchandise incurred in transit must be filed against and presented to the carrier by Buyer. Small package delivery is via UPS only. Freight is shipped best way via common carriers.
- (9) **Dies, Tools and Patterns**— Charges made for dies, tools and patterns are part of the purchase price of the goods and do not convey ownership to Buyer. All dies, tools and patterns remain the property of Seller, unless agreed by Seller in writing.
- (10) **Payment**— Seller is a mail-order operation and accepts Visa and MasterCard or prepayment by bank checks drawn on U.S. funds. Internet orders are charged online when the order is placed. Net 15 terms are allowed to certain commercial customers with approved credit. Terms are from date of invoice and not from date the goods are received. No extra dating. All payments shall be made in U.S. dollars. Any amounts past due are subject to a service charge of 1.5% per month (18% annually) starting 30 days from invoice date. The minimum merchandise billing amount is \$50.00. All prices and specifications are subject to change without notice.
- (11) **Collection**— In the event that legal action is required by Seller to collect the amount owed by Buyer, Buyer will pay Seller all costs of collection including reasonable attorney's fees.
- (12) **Shipping Weights, Prices and Specifications**— Weights will vary according to size of shipping carton and/or packaging materials used. Weights are used for determining approximate freight charges. Seller is not responsible for any difference in calculated freight charges versus actual freight charges. All prices and specifications are subject to change without notice.

Exhibit  
M4-1-2

**Via Five - Five Star Flags**

720 Center St. Building B  
Costa Mesa, CA 92627  
Phone # 949 650 6698  
Fax # 949 631 3080

**Purchase Order**

Account #	Date	P.O. No.
FC0956	5/8/2007	11005136

<b>Vendor</b>
The Flag Company 3600 Cantrell Ind. Ct. Acworth, GA 30101 Attn: Holly

<b>Ship To</b>
Coldwell Banker Residential Realty attn Renee Oke 8 Waters Avenue Rocky Hill, CT06067

Confirmation	Five Star Flags	Ship Via		Requested By	Terms
Order ID	sac0508071050	Ground		5/11/2007	Net 10
Item	Description	Qty	Rate	Shipping Date	Amount
10184-8188	12' X 18' on 30' wooden staff 3 mil embossed poly. Pole hem double-stapled onto staff. 'Made in USA' on hem of flag.,	100.00	0.22	5/8/2007	22.00
10184-1218...	COMPLIMENTS CARDS :4.5' X 5' white, packed by 100	1.00	3.00	5/8/2007	3.00
Tracking Number		Total			\$25.00
Vender Invoice Number					

Exhibit

MA-2

**THIS IS A BLIND DROP:**

**\*\*USE OUR UPS ACCOUNT NUMBER 443Y4Y; NO MFG DOCS & LOGO; NO BACKORDER; YOU MUST SHOW FIVE STAR FLAGS AS SHIPPER, AND SHOW ORDER ID AND CONFIRMATION NUMBER ON SHIPPING LABEL.**

**\*\*You must provide TRACKING NUMBER. WITH MATCHING VIAFIVE PO NUMBER TO VIAFIVE BY EMAIL at LANYI@FIVESTARFLAGS.COM**





6. Between 2002 through 2007 the LLC and the Plaintiff's company maintained a vendor/customer relationship. Plaintiff was vendor to the LLC.

7. The LLC issued Purchase Orders containing substantially the terms and conditions on the face of Exhibit 777. There was no reverse-side terms.

8. Plaintiff mailed hard-copy invoices to the LLC, all substantially of the form, text and style as in Exhibit 778, thus both the Purchase Order, and vendor invoice are within the LLC accounting records in paper form.

9. AS to the Declaration of Vicki Lawrence (Attachment to Docket 27, Response in Opposition to Motion for Protective Injunction

10. Paragraph 6. Plaintiff specifies a sequence of payments. Plaintiff had no, and never had, control in any way, nor knowledge of, nor was privy to, any of our customer payment timeframes in any regard whatsoever save the interchange practice compliance.

11. The LLC policy and procedures in the capture of credit card funds from purchasers presenting VISA and MasterCard purchases executed captures in batch mode daily, on orders we trigger as 'shipped' in the internal accounting systems of the LLC.

12. In simpler terms, the LLC did not 'get the money' from the credit card, until product was on a shipping carrier, thus honoring the credit card policy requirements of 'capture funds only when products ship.'

13. The cycle is authorized transactions (the credit card presented has available balance as well as validity) sit in queue, until the batch settlement time set up in processing. Authorized funds are 'captured' as all the day's 'authorized-to-capture' transactions settle out at the batch settlement time.

14. Any suggested relationship, or agreement, in any form imagined, between Plaintiff and the LLC, whereby Plaintiff controlled or directed in any regards, payments between the LLC's customers and the LLC, does not exist, save the interchange practice compliance.

15. Plaintiff can not claim She had any 'control' in when the LLC collected 'payment from the customer.' Plaintiff's continuous assertions of this minutia in a competitors transaction processing is subterfuge, since the Plaintiff was a competitor and a supplier at the same time, there is no logical business reason for them to have 'say' or 'rights' or knowledge, in our internal transaction processing.

16. Paragraph 13. Plaintiff and the LLC were direct competitors. Of course, we solicited business from each other customers, as they are the same marketplace, that is, realtors and real estate agents.

17. The LLC executed hundreds of Purchase Orders to the Plaintiff company. Each and every PO carried specific terms, one of which states in bold type 'Blind drop.' By definition, confidentiality in the form of a 'chinese wall' was erected. On the part of a manufacturer that sells direct, this is a critical blind drop concept when acting as the vendor versus acting as the competitor.

18. The distinction is one of poaching. The manufacturer-direct / competitor in the market maintains integrity by honoring the Chinese wall.

19. The LLC stocked some items it does not make, for shipping direct. In many other orders for flag products, a 'blind drop' is routine and standard procedure, throughout the flag industry in this nation.

20. the LLC orders blind drops to ship branded (trademarked) goods, generic (no label) goods, and commodity product under 'private label'. These are also practices throughout the flag industry in this nation.

21. The LLC only issued PO's to the Plaintiff for generic goods, in this style: USA flag 12x18inch, on 30" stick... the Plaintiff's invoices substantively echoed these descriptions.

22. Paragraph 16 - The LLC warned Plaintiff regarding the blind-drop confidentiality requirements, whenever we learned Plaintiff breached the Purchase Order terms by including the prohibited mark. Instance(s) were not numerable, but

certainly memorable; as each occurrence indicated a potential breach of faith, and 'poaching' of the LLC's customer.

23. The LLC and Plaintiff's specifically discussed the LLC customer information when breach was discovered. ON at least one occasion, Plaintiff stated it was 'a mistake' and 'would not happen again.' Plaintiff is and was, keenly aware of the LLC's intentions regarding the confidential nature of the LLC's customer information.

24. The Plaintiff was keenly aware, under the blind-drop term, that they, the Plaintiff, were NOT a part of the LLC's transactions with it's customers in ANY way, they were not to exist in the customers cognizance of the transaction in any way.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my personal knowledge and belief.

Executed this 31<sup>st</sup> day of December, 2009



Steven A Chan  
720 Center Street  
Costa Mesa, CA 92627  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

THE FLAG COMPANY, INC. a	)	
Georgia Corporation,	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE NO.
vs.	)	
	)	1:09-CV-1880
STEVEN A CHAN, LLC (d/b/a FIVE	)	
STAR FLAGS and/or VIA5), a	)	
California Limited Liability Company,	)	
And STEVEN A. CHAN, a California	)	
resident	)	
Defendant	)	
	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have this day manually filed, by placing into a package, the foregoing **REPLY TO DOCKET 27 [RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE INJUNCTION]** with the Clerk of Court. The Clerk of Court will use the CM/ECF system to automatically send e-mail notification of such filing to the following attorneys of record:


J. Tucker Barr  
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Further, a copy has been placed in the US Mail, and sent to:

J. Tucker Barr  
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Dated, the 25<sup>th</sup> day of November, 2009

*31st day of December, 2009*



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**CERTIFICATE OF COMPLIANCE**

Pursuant to Civil Local Rule 7.1D, this is to certify that the foregoing Reply to Docket 27 [Response in Opposition to Motion for Protective Injunction] complies with the font and point selections approved by the Court in Civil Local Rule 5.1C. The foregoing Reply was prepared on computer using New Times Roman font (14 point).

DATED this ~~25th~~ day of November, 2009

*31st day of December, 2009*



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